

**CITY OF PEORIA, ARIZONA
COUNCIL COMMUNICATIONS**

CC: WC
Amend No. _____

Date prepared: November 23, 2009

Council Meeting Date: January 5, 2010

TO: Carl Swenson, City Manager
THROUGH: Susan J. Daluddung, Deputy City Manager
FROM: Andrew Granger, P. E., Engineering Director
THROUGH: Dan Nissen, P. E., Assistant City Engineer
PREPARED BY: Richard Costa, Associate Engineer *RAC*



SUBJECT: Utility Agreements – Cox, Qwest, and Arizona Public Service Overhead Facilities Conversion to Underground for the 84th Avenue Streetscape Project (Project Nos. P-0201 and P-0314, Budget No. PW00207, Solicitation No. P04-0015,) Arizona Department of Transportation File No. IGA/JPA 09-026I, TRACS No. SS 657 01 C, Project No. PEO 08-602, LCON 05809A)

RECOMMENDATION:

Discussion and possible action to authorize staff to enter into three separate utility agreements between the City of Peoria and Cox Communications, Qwest Communications, and the Arizona Public Service (APS) for the conversion of existing overhead electrical and telecommunication facilities to underground along 84th Avenue in the estimated amount of \$300,000.

SUMMARY:

On November 3, 2009, Council adopted a Resolution approving an intergovernmental agreement (IGA) between the City of Peoria (city) and the State of Arizona (state) which identified conduits and trenching improvements the state agreed to install for conversion of the existing overhead electrical and telecommunication facilities to underground along the east side of 84th Avenue from Monroe Street to Peoria Avenue. The total estimated city cost identified by the state for trenching and conduits is \$187,927. This amount has already been paid to the state.

CITY CLERK USE ONLY:

- Consent Agenda
- Carry Over to Date: _____
- Approved
- Unfinished Business (Date heard previous: _____)
- New Business
- Public Hearing: No Action Taken

ORD. # _____ RES. # _____
LCON# 01110 LIC. # _____
Action Date:
LCON 01210
LCON 01310

The actual utility undergrounding work will be completed by the utility companies. These additional improvements will be 100% funded by the city and will require the execution of separate utility agreements with APS, Cox, and Qwest.

Staff has reviewed the agreements and recommends approval. A breakdown of the estimated costs is provided below.

Cox Communications Agreement	\$162,134
Qwest Communications Agreement	\$ 20,000
Arizona Public Service (APS) Agreement	\$ 96,851
Contingencies (8%)	<u>\$ 21,015</u>
Total Estimated Cost for Actual Conversion to Underground	\$300,000

SCHEDULE:

This project is partially funded with federal funds and will be managed by the Arizona Department of Transportation (ADOT). The final schedule will be developed by ADOT. The anticipated project schedule is summarized below.

Task	Date
Bid Advertisement	January 15, 2010
Notice to Proceed	March 2010
Construction	March 2010 – October 2010

ADOT agrees to include the work associated with these subject utility agreements and the actual conversion to underground with their construction schedule.

FISCAL NOTE:

Funding is available and payment will be made from the 84th Avenue Streetscape Project Transportation Sales Tax Fund Street System Account 7010-7075-543001-CIPST-PW00207CO in the estimated amount of \$300,000.

JULY 15, 2009



Mr. Richard Costa:
City Of Peoria:
PEORIA PEDESTRIAN IMPROVEMENT
84th AVE MONROE TO PEORIA

Cox Communications will relocate the aerial fiber & coax lines within this project into the new joint trench conduits to be placed by the city of Peoria / ADOT contractor. The cost of this relocation improvement to include materials & labor to complete the relocation for the city of Peoria is as follows:

Coax cost: \$ 7,767.47
Fiber cost: \$ 154,366.90

Total conversion cost:: \$ 162,134.37

Per the meeting held at the ADOT field office with all the utilities & city of Peoria & ADOT on July 23, 2009 the ADOT contractor is to supply all underground materials to be billed to the city of Peoria. Cox Communications will supply & install all vaults, manholes & coax pedestals. Once the duct structure is in place Cox Communication will start the process of relocating our facilities & working with the other utility schedules. There are multiple fiber optic lines that will take time to convert and an actual completion date is difficult to predict. Fiber splicing alone may take up to 8-12 weeks to complete.

Cox Communications will supply a joint trench drawing showing the placement of the duct structure we will need for this project.

Cox Communications will supply inspectors to inspect the placement of the joint trench. John O'Connell (602-694-1779) & Randy Sims (602-694-1783) will be the 2 primary inspectors for this project. Please allow 36 hours notification for scheduling of inspections. One of us may be able to make this possibly sooner.



very truly yours,
RANDY SIMS
COX COMMUNICATIONS
PROJECT COORDINATOR
FIBER CONSTRUCTION.
602-694-1783

LCON01110

Date: <u>7/13/2009</u>	
Billing Address:	Work Location:
Customer: <u>City of Peoria</u>	<u>87th Ave. Olive to Hatcher Ave.</u>
Attention: <u>Richard Costa</u>	County <u>Maricopa</u>
<u>9875 N. 85th Ave.</u>	<u>Peoria, AZ</u>
<u>Peoria, AZ 85345</u>	

Description and/or specifications of work to be performed by Qwest under this Proposal ("Work"):

This job will relocate the buried cable and conduit to clear conflict with a City of Peoria road project. In the performance of this agreement the parties shall abide by and conform to any and all applicable laws of the United States and the State of Arizona, including but not limited to all laws pertaining to immigration and worker eligibility requirements. job not to exceed \$20,000.

Advance Payment (required before work begins): \$0.00

Actual Not to Exceed: Twenty Thousand Dollars and 00/100

*For the Work performed hereunder by Qwest, Customer will be responsible for these Charges only, unless a change order is signed by both parties in accordance with Section 8 below. For outstanding balances, Qwest will submit an Invoice of Charges to Customer within forty five (45) days of completion of the work under this Proposal. Customer will pay the invoice within thirty (30) days of receipt. All past due accounts will be assessed a late fee at 14% APR.

Qwest shall perform the Work in a professional manner, consistent with industry standards, shall be fit and sufficient for the stated purpose and shall conform to the Specifications. The Work to be performed under this Proposal shall be released to Construction for scheduling pending the return of the fully executed Proposal and receipt of the Advance Payment. This Proposal may be withdrawn by Qwest if not accepted by the Customer within 30 days.

Qwest Corporation

Authorized Signature

Name Printed/Typed Sangeeta Jukar

Title: _____

Date: Manager General Accounting

Acceptance of this Proposal and all of its terms and conditions constitute a binding contract. The charges and specifications are satisfactory and are hereby accepted.

Customer

Authorized Signature _____

Name Printed/Typed _____

Title: _____

Date: _____

NOTE: CONTRACT TERMS AND CONDITIONS ARE PRINTED ON PAGE 2 OF THIS DOCUMENT.

The Proposal, these Terms and Conditions and all terms and conditions in the applicable tariff, catalog, or price schedules constitute the entire agreement between the parties (the "Agreement") and supersede all previous agreements between Qwest and Customer relating to the Work and related subject matter hereof. No other terms and conditions are applicable, including but not limited to terms and conditions attached to Customer's Purchase Order (PO). In the event that any applicable tariffs, catalogs, price schedules, rules or statutes prohibit performance in accordance with the terms of the Agreement, or have the effect of modifying, superseding, or suspending provisions of the Agreement prior to performance by a Party hereunder, then to the extent of such inconsistency, the Agreement may become null and void, and the Parties may elect to enter into a new agreement or an amendment of the Agreement to conform to such tariffs, catalogs, price lists, rules or statutes.

1. **Customer Responsibilities.** Customer shall furnish all applicable surveys and a description of the Customer site. Customer shall be responsible for, and secure and pay for all necessary permits, approvals, easements, assessments and any other charges required for the Work to be performed under the Agreement on the Customer's Premises. Customer agrees to provide copies of the same, along with any filing information if applicable, to Qwest upon demand.

2. **Concealed/Subsurface Conditions.** Should concealed conditions be encountered below the surface of the ground, or in an existing structure, during the performance of the Work, differing materially from those ordinarily encountered and generally recognized as inherent in the Work, the Agreement Charges shall be equitably adjusted by Change Order upon written claim by either party made within twenty (20) days after the first observance of such conditions.

3. **Safety and Environmental.** Customer understands and acknowledges that should Qwest encounter a hazardous substance and determine that such substance presents a health or physical hazard, Qwest may, without penalty, discontinue work under this contract.

4. **Changes.** Changes in the Work, an adjustment to the proposal price or the timeframe for the Work shall be made by Change Order specifically stated in writing between the parties. The cost or credit to the Customer from a change shall be determined by mutual agreement.

5. **Termination.** In the event Customer elects to abandon the project and terminate this contract for Customer's convenience, Qwest shall be paid for all Work executed and any reasonable expense sustained as of the date of termination.

6. **Title to Equipment and Facilities.** Title to, and ownership of, all lines, equipment and other property installed or constructed by Qwest in connection with the Agreement or the provisioning of Service is and remains with Qwest. Customer does not own facilities placed as a result of the Work performed under the Agreement, those facilities are owned solely by Qwest.

7. **Other Communications Services.** The Agreement is independent, separate, and distinct from any local exchange or other communications or other service Qwest currently provides, or may provide in the future to Customer, whether or not Qwest provides or may provide such services to Customer using the Qwest equipment and facilities to which the Agreement

refers. Customer shall be responsible for paying for all other local exchange or other services separate from the payment requirements of the Agreement.

8. **Warranty.** Qwest shall perform the Work in a professional manner, consistent with industry standards, and shall conform to the specifications set forth herein. All workmanship for the Work performed under the Agreement is guaranteed against defects for a period of six (6) months from the date of completion. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING BUT NOT LIMITED TO, ANY OTHER WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AS APPLICABLE TO THE WORK PERFORMED UNDER THE AGREEMENT.** The exclusive remedy for a breach of this warranty shall be that Qwest will re-perform any part of the Work which is found to be defective. Qwest shall not be responsible for damage to its work by other parties or for improper use of the equipment by others.

9. **General.** This Agreement shall be governed by the state within in which the facilities are located, or in the case of interstate facilities the laws of the State of New York, without regard to its choice of law principles; provided however, that Work may also be subject to the Communications Act of 1934, as amended or applicable State tariff, catalogs or price lists. Neither party's failure to insist upon strict performance of any provision of this Agreement shall be construed as a waiver of any of its rights hereunder. Customer may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of Qwest, which consent will not be unreasonably withheld. Customer may not assign to a reseller or a communications carrier under any circumstances. This Agreement is intended solely for Qwest and its affiliates and Customer and it shall not benefit or be enforceable by any other person or entity. All amendments to this Agreement shall be in writing and signed by the parties' authorized representatives. **Electronic or facsimile signatures in connection with this Agreement shall be recognized and treated the same as the original.** Qwest may act in reliance upon any instruction, instrument, or signature reasonably believed by Qwest to be genuine and Customer agrees that any employee of Customer who gives any written notice or other instruction has the authority to do so.

10. **For Qwest Affiliate Transactions Only.** If under applicable law, this Agreement, or notice thereof, must be filed with a governmental entity, including but not limited to a state public utility commission, this Agreement shall not become effective with respect to any jurisdiction having such requirements until the filings have occurred.



A subsidiary of Pinnacle West Capital Corporation

Bobby Garza
Governmental Liaison
Project Management

Tel.: 602-371-7989
Fax: 602-371-7388
E-mail: Baldemar.garza@aps.com

Mail Station 3876
P.O. Box 53933
Phoenix, Arizona 85072-3933

September 15, 2009

City of Peoria
Engineering Department
Attn: Rich Costa
9875 N. 85th Ave.
Peoria, AZ 85345

PROJECT: City of Peoria / ADOT Project No. 000-MA-PEO SS657 01C
SUBJECT: Authorization to Bill Letter of Agreement
APS Job No: W447193 Overhead to Underground
Conversion of APS facilities 84th Ave. Monroe to Peoria Ave.

Dear Mr. Costa,

This letter serves as a letter of agreement for Arizona Public Service Company ("APS") Work Authorization No. W447193 relating to the above-mentioned project. The following is an outline of the costs and responsibilities of APS, the City of Peoria ("City") and The Arizona Department of Transportation (ADOT).

- 1) **To be provided and installed by City of Peoria / ADOT Contractor**
 - a) All trench material and trench related work including, but not limited to, trenching, spoils, removal, backfill material and compaction per APS Transmission and Distribution Construction Standards (T.A.D.C.S.) manual, section 8601. All surface restoration (i.e. landscaping, sidewalks, curbs, gutters, pavement, driveways, valley gutters, etc.) as it relates to work performed on this project by the City / ADOT contractor and crews.
 - b) All conduit, conduit related material, work associated with the conduit, including but not limited to; 1", 2", 3", 4" and 5" PVC conduit, conduit sweeps, conduit caps, conduit plugs, primer, glue, conduit spacers, rebar, concrete encasement, and mandrelling of the conduit system.
 - c) All miscellaneous material and work including, but not limited to, barricading, shoring, steel plating, and traffic control.
 - d) All labor to install APS provided manholes, pull boxes, j-boxes, box pads, flat strap, transformer pads, and ground rods (or alternate grounding material).
 - e) All conduit shown to be ending in energized APS equipment shall be stubbed 4 feet ' from either the equipment or the Blue Stake marking for underground electric cables in the vicinity. The conduit is to be capped, marked, safely barricaded, and left exposed for APS crews to connect to the equipment.
 - f) City contractor is to provide construction centerline staking, vertical control and staking of depth requirements for all APS equipment and trenches. Trench alignment and depths shall be adjusted to provide a minimum of two (2) feet vertical clearance from proposed conflicts, and one (1) foot vertical clearance from existing conflicts. APS requires two-(2) feet horizontal alignment from all existing and proposed conflicts.



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- g) The ADOT contractor shall supply all of the trench and conduit and install of the Street lighting poles and fixtures as outlined on the APS drawings and also install the APS provided ground rods, street lighting j-boxes, primary splice boxes, pull line, transformer pads, pull boxes, switching cabinet box pad, and electronic markers.

NOTE: CAUTION DO NOT ENTER - ENERGIZED APS EQUIPMENT

2) **To be provided by Arizona Public Service Co. and installed by the City of Peoria Contractor**

All ground rods (or alternate grounding material), street light junction boxes, pull boxes, pull line, transformer pads, pull boxes, switching cabinet box pad, and electronic markers.

3) **To be provided and installed by Arizona Public Service Company**

- a) Conduit system inspection including; trench work, conduit installation, miscellaneous work and installations. Call 602-371-7546 a minimum of 72 hours prior to needing inspection.
- b) APS Transmission and Distribution Construction Specifications as related to the project.
- c) All trench, bell holes and backfill as required to splice APS cables from the point at which the City contractor ended to the APS equipment cabinet (surface restoration is to be provided by the City contractor).
- d) APS will connect to the City contractor's conduit after the system has been mandrilled and accepted.
- e) All conduit and sweeps, as required, from the point at which the City contractor's conduit ended, to the existing energized electrical equipment.
- f) Horizontal survey of all APS facilities. Call 602-371-7989 five- (5) working days prior to needing the staking of the trenches.
- 4) APS relocation job scope as follows:
- Relocate existing APS 12 kV/ overhead / underground facilities.
 - Provide all necessary trench and conduit as mentioned above in notes A-F.
 - Install new APS Underground / Overhead 12kV facilities to replace APS facilities that are in conflict with the new City / ADOT road Improvements or are a part of the conversion.
 - Schedule night outages and work with APS Residential and commercial customers.
 - Provide all necessary traffic control for the work performed by APS forces.
- 5) APS will relocate primary 12kV facilities that are a part of the overhead to underground conversion as shown on the APS drawings specifically located between Peoria Avenue and Monroe street on 84th Avenue as agreement with both the C.o. Peoria and APS and as requested by the City of Peoria (see enclosed plan). This equipment is located within the C.o. Peoria projects limits. The City shall reimburse APS \$96,851.00 for the relocation and overhead to underground conversion of the APS 12kV facilities as requested by the C.o. Peoria.



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The City of Peoria shall pay APS \$96,851.00 for all work performed by APS as required by this project.

Please sign both enclosed copies of this letter and return one to me to indicate your approval of the above costs and responsibility. If you have any questions, please call me at 602-371-7989.

Sincerely,

Bobby Garza
Governmental Liaison Sr.
Underground Construction
Encl.

The City of Peoria agrees to reimburse APS the amount of \$96,851.00 for all the work APS performed in association with the City of Peoria Project No. 000-MA-PEO SS657 01C

Approved and accepted this _____ day of _____, 2009 on behalf of the City of Peoria.

By: _____

Its _____